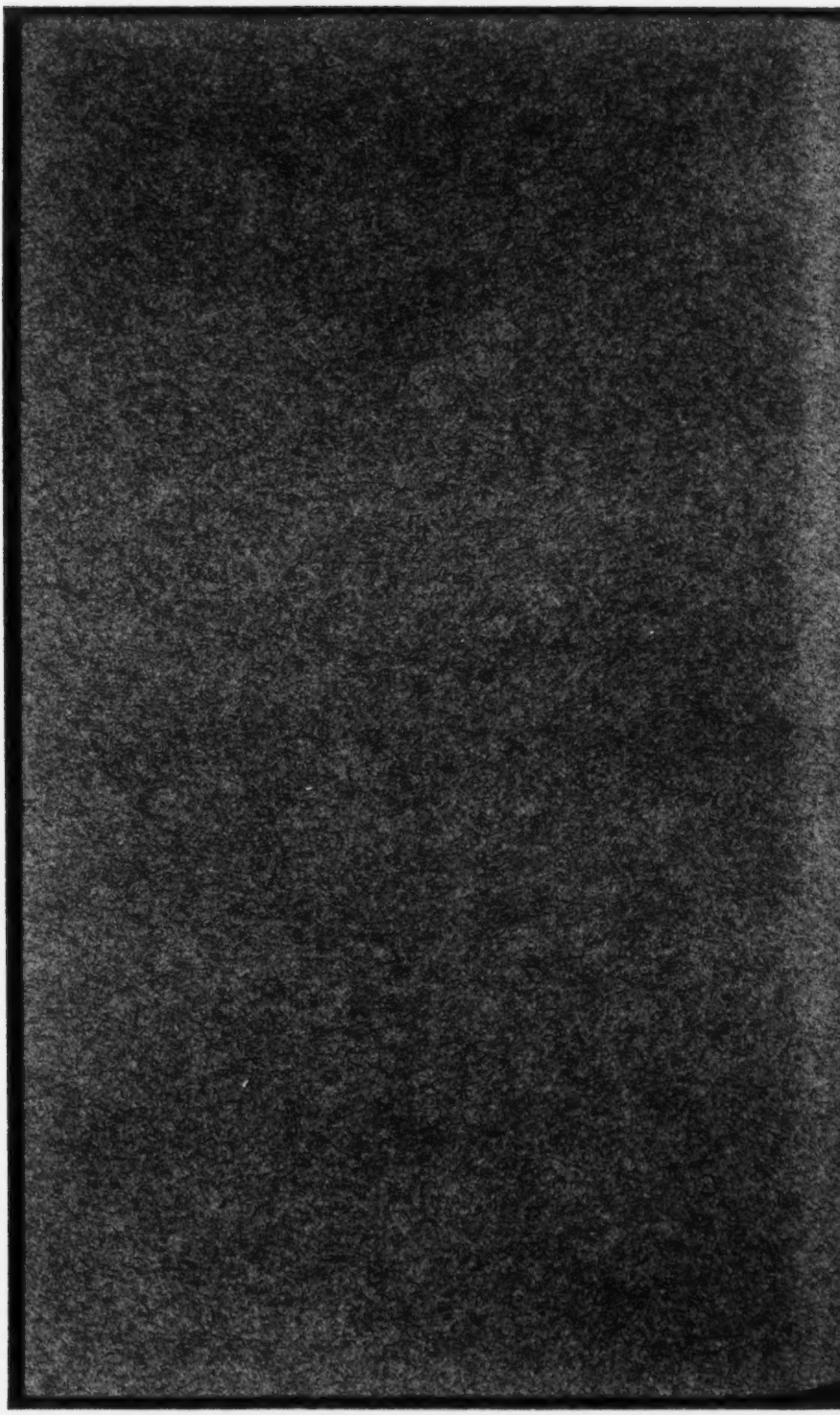
No. [redacted]

In the Supreme Court of the United States

October Term, 1941

The S. S. White Dental Manufacturing Co.,



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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 228

THE S. S. WHITE DENTAL MANUFACTURING COMPANY, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court below (R. 10–17) is reported in 38 F. Supp. 301.

JURISDICTION

The judgment of the court below was entered on April 7, 1941 (R. 17). The petition for a writ of certiorari was filed July 1, 1941 (R. 17). The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended by the Act of May 22, 1939.

QUESTION PRESENTED

Taxpayer, a manufacturer, abandoned one of its several plants and transferred the operations of the abandoned plant to its main plant where a new building was to be erected to accommodate the operations thus transferred. The abandoned plant was in good condition and adequate for the taxpayer's use.

The question presented is whether the taxpayer is entitled to a deduction for obsolescence on account of the abandonment of the plant, under Section 23 (1) of the Revenue Act of 1936.

STATUTE AND REGULATIONS INVOLVED

The pertinent portions of the applicable statute and regulations are set forth in the Appendix, *infra*, pp. 7–10.

STATEMENT

The special findings of fact of the Court of Claims (R. 7–9) may be summarized as follows:

Petitioner, a corporation, during 1936 carried on its main manufacturing operations in three plants, one at Frankford, Pennsylvania, another at Northwood, Pennsylvania, and the third at Staten Island, New York. During 1936 and 1937 the Northwood plant was in good condition, adequate for petitioner's manufacturing operations, and in an industrial center within easy access to housing accommodations and other facilities used by employees (R. 7).

On April 1, 1936, petitioner decided to transfer the operations of the Northwood plant to the Staten Island plant and to erect a new building at Staten Island to house the consolidated operations. It was estimated that this would result in an annual savings in excess of approximately $30,000. Consideration was to be given later to the transfer also of the Frankford operations to Staten Island (R. 7–8).

A contract for the erection of the new building was then entered into and the building completed by April 1, 1937. All departments of the Northwood plant were moved into the new building on or before May 1, 1937. The Northwood plant was accordingly vacated and abandoned by the petitioner (R. 8).

The reasonable salvage value of the Northwood plant on April 1, 1937, was $75,560. It was sold on July 1, 1937, for a net sale's price of $83,160.50 (R. 8).

Petitioner's income and excess-profits tax return for the year 1936 showed a total tax of $83,660.87, which was paid in installments during the year 1937. An additional assessment of tax in the amount of $816.85 and interest of $230.15 was paid on July 24, 1937 (R. 8–9).

In its income tax return, petitioner did not claim any deduction for obsolescence on account of the abandonment of the Northwood plant. On

April 28, 1938, petitioner filed a claim for refund upon the ground that it was entitled to an obsolescence deduction on account of the abandonment of the Northwood plant in the amount of $71,628.34 (R. 9).[1]

Upon these facts, the Court of Claims held that the petitioner was not entitled to recover and dismissed the petition.

ARGUMENT

The court below properly held that the underlying reason for the abandonment of the Northwood plant and its consolidation with the Staten Island plant was to save the extra operating costs of maintaining the two plants (R. 13).

The holding that petitioner had accordingly failed to prove that the physical properties of the Northwood plant were obsolescent is clearly in accord with *Real Estate Title Co.* v. *United States,* 309 U. S. 13. In that case the taxpayer voluntarily discontinued the use of one of two title plants and as a consequence claimed a deduction

[1] The petitioner's claim stated that on the basis of cost less depreciation of $170,504.45 and the estimated sale value as appraised of $75,000.00, the petitioner suffered extraordinary obsolescence amounting to $95,504.45. The allowance which petitioner claims for 1936 is three-fourths of this sum, or $71,628.34, since nine of the twelve months claimed extraordinary obsolescence occurred in 1936 (R. 9).

for obsolescence. This Court disallowed the deduction and said (p. 17):

> For obsolescence under the Act requires that the operative cause of the present or growing uselessness arise from external forces which make it desirable or imperative that the property be replaced.

The claimed obsolescence in this case was not caused by any of the "external forces" which are commonly recognized as causing obsolescence. None of the cases cited by petitioner in its brief sustains its position that a deduction for obsolescence is allowable under such circumstances. Petitioner claims (Pet. 4) that the abandonment of the old plant and its replacement constitute supersession and give rise to statutory obsolescence, citing this Court's definition of obsolescence in *United States Cartridge Co.* v. *United States,* 284 U. S. 511, 516; and in the *Real Estate Title Co.* case, *supra.* Although this Court recognizes "supersession" as one of the manifestations of obsolescence, it is clear from the *Real Estate Title Co.* case (p. 17) that voluntary abandonment of facilities does not give rise to the right to an obsolescence deduction unless the inutility of the property abandoned arose from external forces. Since the alleged uselessness in the instant case arose from the voluntary action of the petitioner in order to

achieve economies by consolidation and not from any external forces or causes, the petitioner is not entitled to the claimed deduction for obsolescence.

CONCLUSION

The decision of the court below is correct. No conflict of decisions has been shown and the petition should be denied.

Respectfully submitted.

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JULY 1941.